

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

PAULO DE LA ROSA
TDCJ-CID #804662

VS.

C. MOORE, ET AL.

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C.A. NO. C-05-593

**ORDER VACATING COLLECTION ORDER,
INSTRUCTING PLAINTIFF TO PAY FILING FEE,
AND CANCELING EVIDENTIARY HEARING**

Plaintiff, a Texas state prisoner proceeding *pro se*, filed this civil rights action on December 27, 2005 and sought leave to proceed *in forma pauperis* (i.f.p.). See D.E. 1, 2. In his original complaint, in response to Question I.A. concerning previous lawsuits, plaintiff indicated that he had filed previously a lawsuit on March 27, 2001 in the United States District Court for the Southern District of Texas, San Antonio Division, and that the case was disposed of by the Fifth Circuit on September 18, 2002. He did not list any other actions. By Initial Partial Filing Fee and Collection Order entered January 5, 2006 (D.E. 5), plaintiff was granted leave to proceed i.f.p., his complaint was filed without prepayment of the filing fee, and he was permitted to pay the \$250.00 filing fee in installments.

It has since been learned that plaintiff is a three-strikes litigant, as that term is defined in 28 U.S.C. § 1915(g), having had, on three prior occasions while incarcerated, lawsuits dismissed as frivolous or for failure to state a claim: De La Rosa v. Prasifka, et al., 2:02cv097 (S.D. Tex. 2002);(2) De La Rosa v. Cockrell, et al., 3:03cv565 (N.D. Tex. 2003); and De La Rosa v. Dretke, et al., 3:03cv543 (N.D. Tex. 2003). Thus, plaintiff has lost the privilege of proceeding i.f.p. See 28 U.S.C. § 1915(g). Plaintiff's pleadings do not allege that he is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

Accordingly, the Initial Partial Filing Fee and Collection Order (D.E. 5) is hereby VACATED. Plaintiff is instructed that, should he desire to proceed with this lawsuit, he must pay the full \$250.00 filing fee within thirty days of the date of entry of this order. Plaintiff is advised further that failure to pay timely the \$250.00 filing fee may result in dismissal of this lawsuit for failure to prosecute. See Fed. R. Civ. P. 41(b). The evidentiary hearing scheduled for February 16, 2006 at 3:00 p.m. is CANCELED. The Clerk shall fax a copy of this order to the warden at the McConnell Unit to notify him that the hearing has been cancelled.

ORDERED this 13th day of February, 2006.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE